

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

Nathaniel Bigelow,

Plaintiff

v.

United States,

Defendant

* * * * * CIVIL ACTION NO.

COMPLAINT

NOW COMES the Plaintiff Nathaniel Bigelow, by and through counsel, as follows:

1. This is a complaint against The United States of America under the Federal Tort Claims Act for medical malpractice committed at the Togus Veterans Administration Medical Center (Togus VAMC) by Togus employees whose professional negligence in the care and treatment of Nathaniel Bigelow caused him permanent injuries and disability.

2. Nathaniel Bigelow is a resident of the Town of Winslow, County of Kennebec, State of Maine.

3. Nathaniel Bigelow presented to the Togus VAMC Emergency Department on March 20, 22, 28, and twice on March 30 (at approximately 2:16 am and again at approximately 8:53 pm). He presented to his primary care physician at Togus VAMC, Margaret Parsons, M.D., on March 24, 2011. He was admitted to Togus VAMC on or about March 30, 2011, and treated there until April 1, 2011. The health care providers caring for Nathaniel Bigelow during each visit to the Togus VAMC Emergency Department, to his primary care physician, and during his admission at the VAMC were negligent in their treatment of Nathaniel Bigelow.

4. The Togus Veterans Administration Medical Center is a health center organized under the United States Department of Veterans Affairs. Each medical provider who cared for Nathaniel Bigelow during the relevant time frame was at all times an employee or agent of the Togus Veterans Administration Medical Center, acting in the scope of his or her employment or authority as an agent. The United States of America is therefore the appropriate party defendant in this case.

5. This court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331 and under 42 U.S.C. § 233 and under the Federal Tort Claims Act 28 U.S.C. §§ 1346 (b), 2401(b), and 2671-2680.

6. An attorney representing the Plaintiff timely submitted to the Department of Veterans Affairs a Notice of Claim form (“Standard Form 95”) which was received by that Department on or about February 15, 2013.

7. Venue is proper in the District of Maine pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in the district. Venue is proper in Bangor, pursuant to Rule 3(b) of the Civil Rules of the United States District Court for the District of Maine, because a substantial part of the events or omissions giving rise to the claim occurred in Kennebec County.

8. On March 20, 2011, Nathaniel Bigelow presented to the Togus VAMC Emergency Department complaining of pain in his mid and upper back. The pain was unrelieved by medication. He was seen and evaluated by Michael Klein, M.D., who instructed him to ice his back and take ibuprofen.

9. On March 22, 2011, Nathaniel Bigelow presented to the Togus VAMC Emergency Department complaining of pain in his mid-thoracic and upper back. The pain was

unrelieved by pain medication. His white blood cell count was elevated at 14.2, which is indicative of a possible infectious process. He was seen and evaluated by William Griffith, M.D., who referred him to his primary care physician.

10. On March 24, 2011, Nathaniel Bigelow saw his primary care physician at Togus VAMC, Margaret Parsons, M.D., for an acute visit regarding the pain in his mid-thoracic back. Nathaniel reported that the onset of pain had been gradual and confirmed that he did not have any acute injury triggering the pain. Dr. Parsons diagnosed him with a probable musculoskeletal injury and referred him to a chiropractor.

11. On March 25, 2011, Nathaniel Bigelow spoke with a mental health provider at Togus VAMC, Amy McAuliffe, P.N.P., who recorded in the electronic medical record that he was experiencing extreme back pain, that he felt nauseous and could not eat, and his throat and chest felt tight. He reported: "I feel awful. There's something' really wrong with me." This note was available in the medical chart to be read by Nathaniel's health care providers at Togus VAMC.

12. On March 28, 2011, Nathaniel Bigelow presented to the Togus VAMC Emergency Department with persistent severe pain in his mid-back. His white blood cell count was elevated at 12.6. Nathaniel was seen and evaluated by Laura Corbett, PA-C. Physician's Assistant Corbett diagnosed mild pericarditis and referred Nathaniel to his primary care physician.

13. On March 30, 2011, Nathaniel Bigelow presented to the Togus VAMC Emergency Department at 2:16 am with continued severe pain in his mid-back. An EKG did not show findings consistent with pericarditis. Nathaniel was seen and evaluated by William Griffith, M.D., who referred him to his PCP.

14. On March 30, 2011, Nathaniel Bigelow presented to the Togus VAMC Emergency Department again, at approximately 8:53 pm, with continued severe pain in his mid-back. He had a temperature of 100.4 Fahrenheit, and lab work showed significant leukocytosis, with an elevated white blood cell count of 26.0. Nathaniel was seen and evaluated by Dennis R. McCann, M.D., who admitted Nathaniel to Togus VAMC.

15. On March 30, 2011, at approximately 10:30 pm, Nathaniel Bigelow was evaluated at Togus VAMC by Peter Gonnella, M.D., a hospitalist and infectious disease specialist. Dr. Gonnella noted a three to four week history of progressive pain in Nathaniel Bigelow's mid-thoracic back, which was worsening in severity. He also noted that Nathaniel had a fever and sweats. Dr. Gonnella was paged repeatedly by nursing staff over the night of March 30th to the 31st, who reported that Nathaniel's pain was unrelieved by pain medication.

16. On March 31, 2011, Nathaniel Bigelow was evaluated at Togus VAMC by Ray Lash, M.D., a hospitalist, who noted that two out of two cultures taken of Nathaniel's blood were positive for bacterial infection with MSSA. Dr. Lash considered that Nathaniel might have a deep infection in his back such as vertebral osteomyelitis.

17. On March 31, 2011, at 8:00 pm, Nathaniel Bigelow reported that he was experiencing occasional numbness in his feet. At approximately 2:10 am on April 1, 2011, he fell. Nathaniel was evaluated by Elizabeth Boogusch, M.D.. He reported that his right leg had given out. He reported decreased sensation in his right leg up to the abdomen, and pain in his bladder with an inability to urinate. He was unable to dorsiflex his right foot. Dr. Boogusch suspected an epidural abscess, and spoke on the telephone with a neurosurgeon at Maine Medical Center, Dr. Wahlig. Dr. Wahlig recommended that Nathaniel receive a stat MRI, at 7:30 am.

18. Nathaniel Bigelow did not receive an MRI until approximately 8:24 am on April 1, 2011. The MRI showed an epidural abscess, which had cut off blood supply to a portion of Nathaniel Bigelow's spinal cord, causing progressively worsening neurological damage. By the time the epidural abscess was diagnosed, Nathaniel Bigelow had lost the use of both legs. This damage is irreversible.

19. Each health care provider who saw or interacted with Nathaniel Bigelow at Togus VAMC on or after March 22, 2013, as detailed above, was negligent in failing to recognize the signs, symptoms, and risk factors for an epidural abscess and order appropriate diagnostic testing, further evaluation and treatment.

20. As a result of this negligence, there was a delay in diagnosis of Nathaniel Bigelow's epidural abscess until April 1, 2011. If Nathaniel's epidural abscess had been timely diagnosed and treated, he would have retained the use of his legs and lower body. As a result of the delay in diagnosis and treatment, Nathaniel Bigelow is a paraplegic and has suffered permanent and ongoing injuries.

21. Nathaniel Bigelow's injuries include pain, suffering, permanent loss of use and function of his legs and lower body, lost earning capacity, and he has been forced to incur bills for his care and treatment. All of these losses will continue into the future.

22. The United States of America is legally responsible for the negligence of Togus VAMC and the medical providers named above.

WHEREFORE, the plaintiff Nathaniel Bigelow requests judgment in his favor against the defendant for damages in an amount determined to reasonable, plus interest and costs, and such other relief as the court deems appropriate.

Dated: February 20, 2014

/s/ Benjamin R. Gideon
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